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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE)	Case No.: 18-16355-BTB
)	Chapter 11
MARQUE MOTOR COACH, LLC,)	
)	MOTION TO COMPEL ASSUMPTION
Debtor)	OR REJECTION OF UNEXPIRED
)	LEASES
)	
)	Hearing Date: January 29, 2019
)	Hearing Time: 10:00 a.m.
)	
)	

Wells Fargo Equipment Finance, Inc., a Minnesota Corporation (herein, “**WFEFI**”),
by and through its attorneys, Smith Larsen & Wixom, hereby files this Motion to Compel
Assumption or Rejection of Unexpired Leases. This Motion is made based upon 11 U.S.C. §
105(a) and § 365(d)(2) of the Bankruptcy Code for an Order compelling Marque Motor
Coach, LLC, debtor and debtor-in-possession (“Marque”) to assume or reject the unexpired
lease described below. In Support of this Motion, WFEFI submits the Points and Authorities
set forth herein.

POINTS AND AUTHORITIES

FACTS

1. On October 24, 2018, Marque filed a Voluntary Petition for protection under Chapter 11 as Case No. 18-16355-BTB

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

3. On or about December 23, 2015, in the State of Nevada, Clark County, Grech Financial Services, Inc., d.b.a. Edson Financial (“**Grech**”) agreed to extend a lease to Marque for a 2016 Volvo 9700 Motor Coach (“**467691-400 Lease**”). The 469691-400 Lease was, and is, evidenced by that certain Equipment Lease, dated December 23, 2015 (the “**467691-400 Agreement**”), executed by Jeffrey Whiteaker for Marque in favor of Grech. A copy of the 467691-400 Agreement is attached hereto as Exhibit 1 and is incorporated herein by this reference.

4. Under the original terms of the 469691-400 Lease, Marque agreed to pay Grech eighty-three (83) payments of \$5,459.00 and one (1) payment of \$84,000.00.

5. The 2016 Volvo 9700 Motor Coach serves as the collateral for the 469691-400 Lease.

6. On or about November 21, 2017, WFEFI and Marque entered in an Amendment which modified the payment terms of the 469691-400 Lease, extending the term to eighty-seven (87) months, with sixty-five (65) installments, composed of three (3) installments of \$1,895.72, sixty-one (61) installments of \$5,459.00, and one (1) installment of \$84,000. A true and correct copy of the Amendment is attached hereto as Exhibit 2 and is incorporated herein by this reference.

7. Grech assigned all right, title and interest in the 467691-400 Agreement to

1 WFEFI. *See* Exhibit 3. The 467691-400 Lease and Agreement are assigned WFEFI account #
2 001-0467691-400.

3 8. As of the date of filing of the instant case, the balance of payments due under
4 the 467691-400 Lease was \$17,728.08, post-petition missed payments totaling \$11,818.72,
5 with current late charges of \$1,091.80, and with the total balance due of \$345,484.62.

6 9. Marque's Schedule D estimates the value of the 2016 Volvo 9700 Motor
7 Coach at \$350,000.00 which WFEFI accepts as the value at this time.

8 10. To the best of WFEFI's knowledge, information and belief, based upon Mr.
9 Jeffrey Whiteaker's testimony at Marque's 341 meeting, the 2016 Volvo 9700 Motor Coach
10 is located at 6625 S. Valley View Blvd., Las Vegas, Nevada.

11 11. On or about December 23, 2015, in the State of Nevada, Clark County, Grech
12 agreed to extend a lease to Marque for a 2015 Mercedes Benz Sprinter Shuttle Bus ("**467691-
13 401 Lease**"). The 469691-401 Lease was, and is, evidenced by that certain Equipment Lease,
14 dated December 23, 2015 (the "**467691-401 Agreement**"), executed by Jeffrey Whiteaker for
15 Marque in favor of Grech. A copy of the 467691-401 Agreement is attached hereto as Exhibit
16 4 and is incorporated herein by this reference.

17 12. Under the original terms of the 469691-401 Lease, Marque agreed to pay
18 Grech sixty (60) payments of \$1,866.00.

19 13. The 2015 Mercedes Benz Sprinter Shuttle Bus serves as the collateral for the
20 469691-401 Lease.

21 14. On or about November 21, 2017, WFEFI and Marque entered in an
22 Amendment which modified the payment terms of the 469691-401 Lease, extending the term
23 to sixty-three (63) months, with forty (40) installments, composed of three (3) installments of
24 \$344.91 and thirty-seven (37) installments of \$1,866.00. A true and correct copy of the
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Amendment is attached hereto as Exhibit 5 and is incorporated herein by this reference.

15. Grech assigned all right, title and interest in the 467691-401 Agreement to WFEFI. *See* Exhibit 6. The 467691-401 Lease and Agreement are assigned WFEFI account # 001-0467691-401.

16. As of the date of filing of the instant case, the balance of payments due under the 467691-401 Lease was \$2,019.95, post-petition missed payments totaling \$4,039.90, with current late charges of \$373.20, and a total balance due of \$53,815.82.

17. Marque's Schedule D estimates the value of the 2015 Mercedes Benz Sprinter Shuttle Bus at \$50,000.00 which WFEFI accepts as the value at this time.

18. To the best of WFEFI's knowledge, information and belief, based upon Mr. Jeffrey Whiteaker's testimony at Marque's 341 meeting, the 2015 Mercedes Benz Sprinter Shuttle Bus is located at 6625 S. Valley View Blvd., Las Vegas, Nevada.

LEGAL ARGUMENTS

Section 365(d)(2) states, in relevant part:

In a case under Chapter ... 11 ... of this title, the trustee may assume or reject an executory contract or unexpired lease of ... personal property of the debtor at any time before confirmation of a plan but the court, on request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

"Reasonable time" within which to affirm or reject a lease under 11 U.S.C. § 365(d)(2) is left to the bankruptcy court's discretion in light of the circumstances of a particular case. *In re Attorneys Office Mgmt., Inc.*, 29 B.R. 96, 98 (Bankr. C.D. Cal. 1983) (citing *In re Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105 (2d Cir.,1982)).

Courts have used various factors to determine what constitutes "reasonable time" for purposes of § 365(d)(2) including: (a) the nature of the interests at stake, (b) the balance of harm to the parties, (c) the safeguards afforded to the parties, (d) the damage third parties

1 may suffer beyond the compensation available under the Bankruptcy Code, (e) the debtor's
2 failure or ability to satisfy post-petition obligations, (f) the purposes of chapter 11, (g) the
3 importance of the contract in relation to the debtor's reorganization, and (h) whether the
4 action to be taken is so in derogation of Congress' scheme as to be said to be arbitrary,
5 *Adelphia Commc'ns Corp.*, 291 B.R. 283,292-294 (Bankr. S.D.N.Y. 2003).

7 Nearly 60 days have now passed since the filing of the instant case and Marque
8 continues to receive the benefit of the 2016 Volvo 9700 Motor Coach and the 2015 Mercedes
9 Benz Sprinter Shuttle Bus without making any payment or providing any consideration to
10 WFEFI. This constitutes a substantial basis for requiring Marque to make an immediate
11 determination to either assume or reject the 467691-400 Lease and/or the 467691-401 Lease.

13 11 U.S.C. § 365(b)(1) requires that, before a debtor can assume an executory contract
14 or unexpired lease, that debtor must cure existing defaults and provide adequate assurance of
15 future performance under the lease. If Marque seeks to assume the 467691-400 Lease and/or
16 the 467691-401 Lease, it will be required to cure all pre-petition and post-petition arrears,
17 together with attorney's fees, costs and expenses.

19 If Marque determines to reject the 467691-400 Lease and/or the 467691-401 Lease, it
20 should be required to do so immediately in order to avoid damages to WFEFI resulting from
21 damage to the 2016 Volvo 9700 Motor Coach and the 2015 Mercedes Benz Sprinter Shuttle
22 Bus and/or wear and tear, age and deterioration of the vehicles and any other loss in value of
23 the vehicles, and any administrative expenses accruing from the Debtor's continued
24 possession and use of the vehicles without making required payments.

26 Thus, Marque should be directed to immediately pay to WFEFI, or give adequate
27 assurance of the prompt payment of the sum of \$19,748.03, representing payment of the
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1 prepetition arrears as of the filing of the instant case. Such sum does not include late fees,
2 interest, costs or attorneys' fees due under the 467691-400 Lease or the 467691-401 Lease.

3 Marque has failed to provide any payments or consideration to WFEFI, yet continues
4 to receive the benefit of the retention and use of the 2016 Volvo 9700 Motor Coach and the
5 2015 Mercedes Benz Sprinter Shuttle Bus. WFEFI urges this Court to compel Debtor to
6 assume or reject the 467691-400 Lease or the 467691-401 Lease immediately or within such
7 time as the Court deems proper. In addition, if Marque elects to assume the 467691-400 Lease
8 or the 467691-401 Lease, it must pay, or give adequate assurance of the prompt payment of
9 the pre- and post-petition arrears. If Marque elects to reject the 467691-400 Lease or the
10 467691-401 Lease, it should be required to immediately surrender the 2016 Volvo 9700
11 Motor Coach or the 2015 Mercedes Benz Sprinter Shuttle Bus to WFEFI and pay all post-
12 petition sums due to WFEFI. Notwithstanding the foregoing, WFEFI reserves the right to file
13 a claim for administrative expenses.

14 Furthermore, Section 365(d)(5) requires payment of post-petition lease payments
15 under an equipment lease such as the 467691-400 Lease and the 467691-401 Lease from
16 December 23, 2018 (60 days from the petition date) until the leases are rejected (if they are
17 indeed rejected).

18 CONCLUSION

19 Based upon the foregoing, WFEFI respectfully requests that the Court enter an order
20 requiring timely payment of post-petition lease payments under the 467691-400 Lease and the
21 467691-401 Lease and compelling Marque to assume or reject the 467691-400 Lease and the
22 467691-401 Lease immediately or within such time as this Court deems proper. In addition,
23 WFEFI requests that this Court order Marque to pay, or give adequate assurance of the
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1 prompt payment of, all arrears due WFEFI if it elects to assume the 467691-400 Lease or the
2 467691-401 Lease.

3 Dated this 21st day of December, 2018

4 SMITH LARSEN & WIXOM

5
6 /s/ Christopher L. Benner

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